

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

ORDER

Crim. No. 05-97(1) and (2) (MJD/JSM)

Charles Petersen and  
Karen Petersen,

Defendants.

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The above-entitled matter comes before the Court upon the Defendants' motions to withdraw their pleas of not guilty and to enter a plea nolo contendere.

Pursuant to the Federal Rules of Criminal Procedure 11(a), a defendant may enter a plea nolo contendere only with the Court's consent. The Rules further provide that prior to accepting such a plea, "the court must consider the parties' views and the public interest in the effective administration of justice." Rule 11(c).

A plea nolo contendere is one "by which a defendant does not expressly admit his guilt, but nonetheless waives his right to trial and authorizes the court for purposes of the case to treat him as if he were guilty". United States v. Buonocore, 416 F.3d 1124, 1127, n.2 (10<sup>th</sup> Cir. 2005) (quoting North Carolina v. Alford, 400 U.S.25, 35 (1970)). One

entering a plea nolo contendere is subject to the same punishment as one who enters into a plea of guilty. United States v. Mapco Gas Products, Inc., 709 F. Supp. 895, 897 (E.D. Ark. 1989) (citing 22 C.J.S., Criminal Law, § 425(4)). One important difference between a plea of guilty and one of nolo contendere, however, is that the latter cannot be used against the defendant in any subsequent civil or criminal proceeding. Id. The Court has broad discretion in determining whether or not to accept such a plea. Buonocore, 416 F.3d at 1130 (citing United States v. Saltow, 445 F.2d 59 (10<sup>th</sup> Cir. 1971)).

In this case, the government opposes the defendant's motion to enter a plea nolo contendere, based in part on the Department of Justice's policy to generally oppose such pleas, and based in part on the fact that the defendants wish to enter a nolo contendere plea without a factual basis. Without a factual basis for the crimes charged, accepting such a plea would be against the public interest.

The Court agrees that accepting a plea nolo contendere without establishing any factual basis would be against the public's interest in the effective administration of justice. Allowing such a plea would lessen the seriousness and deterrent effect of these proceedings.

IT IS HEREBY ORDERED that the Defendants' Motions to Amend  
Pleadings to Enter a Plea Nolo Contendere are DENIED.

Date: March 14, 2006

s / Michael J. Davis  
Michael J. Davis  
United States District Court

Criminal No. 05-97(1) and (2)